

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

E.P., by and through his guardian ad litem, Michel Hernandez-Disla,

Plaintiff,

v.

TEHACHAPI UNIFIED SCHOOL DISTRICT, et al.,

Defendants.

Case No. 1:23-cv-01724-JLT-CDB

SCHEDULING ORDER (Fed. R. Civ. P. 16)

Rule 26 Disclosures: June 14, 2024

Pleading Amendment: July 15, 2024

Discovery Deadlines:

Non-Expert: November 15, 2024

Expert: January 27, 2025

Mid-Discovery Status Conf.: October 3, 2024

Non-Dispositive Motion Deadlines:

Filing: February 10, 2025

Hearing: March 17, 2025, 10:30 a.m.

Dispositive Motion Deadlines:

Filing: April 14, 2025

Hearing: May 27, 2025, 8:30 a.m.

Pre-Trial Conference: July 21, 2025, 1:30 p.m.

2500 Tulare Street, Fresno, CA

Trial: September 16, 2025, 8:30 a.m.

2500 Tulare Street, Fresno, CA

(estimate 5 days)

On December 14, 2023, Plaintiff E.P. (“Plaintiff”) initiated this action with the filing of a complaint against Defendants Tehachapi Unified School District and Jason Grimes (“Defendants”). (Doc. 1). Plaintiff raises the following claims: (1) violation of 42 U.S.C. § 1983, (2) violation of

1 Americans with Disabilities Act, 42 U.S.C. § 12132, (3) violation of Bane Act, Cal. Civ. Code. § 52.1,
2 (4) violation of mandatory statutory duty, Cal. Gov. Code § 815.6, (5) battery, and (6) negligent
3 hiring, supervision, or retention of employee. *Id.* On May 6, 2024, Defendant Tehachapi Unified
4 School District filed a crossclaim against Defendant Jason Grimes. (Doc. 33).

5 The parties convened via Zoom videoconference for a scheduling conference before Magistrate
6 Judge Christopher D. Baker on May 15, 2024. Goriune Dudukgian appeared on behalf of Plaintiff
7 E.P., Anthony N. DeMaria appeared on behalf of Defendant Tehachapi Unified School District, and
8 Ryan Kennedy appeared on behalf of Defendant Jason Grimes.

9 **I. Magistrate Judge Consent**

10 Currently there is no joint consent to Magistrate Judge jurisdiction.

11 **Notice of Congested Docket and Court Policy of Trailing**

12 Due to the District Judges' heavy caseload, the adopted policy of the Fresno Division of the
13 Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set before a
14 District Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case
15 set on the same date until a courtroom becomes available. The trial date will not be reset.

16 The Magistrate Judges' availability is far more realistic and accommodating to parties than that of the District Judges who carry the heaviest caseloads in the nation and who must prioritize criminal and older civil cases over more recently filed civil cases. A Magistrate Judge may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

22 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to conduct all further proceedings, including trial, and to file a consent/decline form (provided by the Court at the inception of this case) indicating whether they will consent to the jurisdiction of the Magistrate Judge.

26 **II. Pleading Amendment**

27 Any motions to amend the pleadings, including to add or substitute parties (including Doe defendants) and/or allegations and claims, must be filed by **July 15, 2024**. Filing a motion and/or

1 stipulation requesting leave to amend the pleadings does not reflect on the propriety of the amendment
2 or imply good cause to modify the existing schedule, if necessary. All proposed amendments must
3 (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the amendment requires any
4 modification to the existing schedule, *see Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609
5 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment is not (1)
6 prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or (4)
7 futile, *see Foman v. Davis*, 371 U.S. 178, 182 (1962).

8 **III. Discovery Plan and Cut-Off Date**

9 The parties shall exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1) by no
10 later than **June 14, 2024**.

11 The parties are ordered to complete all discovery pertaining to non-experts on or before
12 **November 15, 2024**, and all discovery pertaining to experts on or before **January 27, 2025**.

13 The parties are directed to disclose all expert witnesses¹, in writing, on or before **November**
14 **29, 2024**, and to disclose all rebuttal experts on or before **December 27, 2024**. The written
15 designation of retained and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule
16 26(a)(2), (A), (B), and (C) and shall include all information required thereunder. Failure to designate
17 experts in compliance with this order may result in the Court excluding the testimony or other
18 evidence offered through such experts that are not disclosed pursuant to this order.

19 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to
20 experts and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
21 included in the designation. Failure to comply will result in the imposition of sanctions, which may
22 include striking the expert designation and preclusion of expert testimony.

23 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
24 disclosures and responses to discovery requests will be strictly enforced.

25 A mid-discovery status conference is scheduled for **October 3, 2024**, at 9:30 a.m. before Judge
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28 ¹ In the event an expert will offer opinions related to an independent medical or mental health evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline so the expert's report fully details the expert's opinions in this regard.

1 Baker. Counsel SHALL file a joint mid-discovery status conference report no later than one week
2 before the conference. Counsel also SHALL lodge the joint status report via e-mail to
3 CDBorders@caed.uscourts.gov. The joint status report SHALL outline the discovery counsel have
4 completed and that which needs to be completed as well as any impediments to completing the
5 discovery within the deadlines set forth in this order. Counsel SHALL discuss settlement and certify
6 in the joint status report (1) that they have met/conferred regarding settlement, and (2) proposed dates
7 for convening a settlement conference before a U.S. Magistrate Judge.

8 **IV. Pre-Trial Motion Schedule / Informal Discovery Dispute Conferences**

9 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
10 than **February 10, 2025**,² and heard on or before **March 17, 2025**. The Court hears non-dispositive
11 motions at 10:30 a.m. at the United States District Courthouse in Bakersfield, California before Judge
12 Baker.

13 No motion to amend or stipulation to amend the case schedule will be entertained unless it is
14 filed at least one week before the first deadline the parties wish to extend. Likewise, no written
15 discovery motions shall be filed without the prior approval of the Court. A party with a discovery
16 dispute must first confer with the opposing party in a good faith effort to resolve by agreement the
17 issues in dispute. If that good faith effort is unsuccessful, the moving party promptly shall seek a
18 hearing with all involved parties and Judge Baker. For these hearings and at the direction of the
19 Courtroom Deputy Clerk, the Court may direct counsel to appear remotely (via Zoom). For hearings
20 noticed to occur in-person, the Court may permit counsel to appear remotely (via Zoom) provided the
21 Courtroom Deputy Clerk receives a written notice of the request to appear remotely no later than five
22 court days before the noticed hearing date.

23 At least three days before the conference, counsel SHALL file informal letter briefs detailing
24 their positions. The briefs may not exceed 5 pages, excluding exhibits. Counsel must comply with
25 Local Rule 251 with respect to discovery disputes.

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28 ² Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of discovery of the dispute, but in no event later than 10 days after the expiration of the non-expert discovery deadline.

1 All dispositive pre-trial motions shall be filed no later than **April 14, 2025**, and heard on or
2 before **May 27, 2025, at 8:30 a.m.** In scheduling such motions, absent consent to Magistrate Judge
3 jurisdiction, counsel SHALL consult the assigned District Judge's general information and calendar
4 accordingly and SHALL comply with Fed. R. Civ. P. 56 and Local Rules 230 and 260.

5 **V. Motions for Summary Judgment or Summary Adjudication**

6 At least 21 days before filing a motion for summary judgment or motion for summary
7 adjudication, the parties SHALL meet, in person or by telephone, to confer about the issues to be
8 raised in the motion.

9 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
10 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
11 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
12 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
13 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

14 The moving party SHALL initiate the meeting and SHALL provide a complete, proposed
15 statement of undisputed facts **at least five days before** the conference. The finalized joint statement
16 of undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be
17 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
18 statement of undisputed facts.

19 In the notice of motion, the moving party SHALL certify that the parties have met and
20 conferred as ordered above, or set forth a statement of good cause for the failure to meet and confer.
21 Failure to comply may result in the motion being stricken.

22 **VI. Pre-Trial Conference**

23 **July 21, 2025**, at 1:30 p.m., located at the United States District Courthouse, 2500 Tulare
24 Street, in Fresno, California, before District Judge Jennifer L. Thurston.

25 The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The
26 parties are further directed to submit a digital copy of their pretrial statement in Word format, directly
27 to District Judge Thurston's chambers, by email at JLTorders@caed.uscourts.gov.

1 Counsels' attention is directed to Rules 281 and 282 of the Local Rules for the Eastern District
2 of California, as to the obligations of counsel in preparing for the pre-trial conference. The Court will
3 insist upon strict compliance with those rules. In addition to the matters set forth in the Local Rules,
4 the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the Court to
5 explain the nature of the case to the jury during voir dire.

6 **VII. Trial Date**

7 **September 16, 2025**, at 8:30 a.m., located at the United States District Courthouse, 2500
8 Tulare Street, in Fresno, California, before District Judge Jennifer L. Thurston.

9 A. This is a jury trial.
10 B. Counsels' Estimate of Trial Time: 5 days.
11 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
12 California, Rule 285.

13 **VIII. Settlement Conference**

14 The parties SHALL meet and confer and notify the Court prior to the Pre-Trial Conference
15 whether they wish to convene a Settlement Conference. In the event the parties request a Settlement
16 Conference, unless otherwise permitted in advance by the Court, the attorneys who will try the case
17 shall appear at the settlement conference with the parties and the person or persons having full
18 authority to negotiate and settle the case on any terms³ at the conference.

19 Consideration of settlement is a serious matter that requires preparation prior to the settlement
20 conference. Set forth below are the procedures the Court will employ, absent good cause, in
21 conducting the conference.

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25 ³ Insurance carriers, business organizations, and governmental bodies or agencies whose
26 settlement agreements are subject to approval by legislative bodies, executive committees, boards of
27 directors or the like shall be represented by a person or persons who occupy high executive positions in
28 the party organization and who will be directly involved in the process of approval of any settlement
offers or agreements. To the extent possible, the representative shall have authority, if he or she deems
it appropriate, to settle the action on terms consistent with the opposing party's most recent demand.

1 At least twenty-one days before the settlement conference, Plaintiff SHALL submit to
2 Defendant via fax or e-mail, a written itemization of damages and a meaningful⁴ settlement demand
3 which includes a brief explanation of why such a settlement is appropriate. Thereafter, no later than
4 fourteen days before the settlement conference, Defendant SHALL respond, via fax or e-mail, with an
5 acceptance of the offer or with a meaningful counteroffer which includes a brief explanation of why
6 such a settlement is appropriate.

7 If settlement is not achieved, each party SHALL attach copies of their settlement offers to their
8 Confidential Settlement Conference Statement, as described below. Copies of these documents shall
9 not be filed on the court docket.

10 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

11 At least five court days prior to the settlement conference, the parties shall submit, directly to
12 Judge Baker's chambers by e-mail to CDBOrders@caed.uscourts.gov, a Confidential Settlement
13 Conference Statement. The statement should not be filed with the Clerk of the Court nor served on
14 any other party, although the parties may file a Notice of Lodging of Settlement Conference
15 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
16 settlement conference indicated prominently thereon.

17 The Confidential Settlement Conference Statement shall include the following:

- 18 A. A brief statement of the facts of the case.
- 19 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon
which the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on the
claims and defenses; and a description of the major issues in dispute.
- 22 C. A summary of the proceedings to date.
- 23 D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- 24 E. The relief sought.

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26 ⁴ "Meaningful" means the offer is reasonably calculated to settle the case on terms acceptable to
the offering party. "Meaningful" does not include an offer which the offering party knows will not be
27 acceptable to the other party. If, however, the offering party is only willing to offer a settlement which
28 it knows the other party will not accept, this should trigger a recognition the case is not in a settlement
posture and the parties should confer about continuing or vacating the settlement conference via
stipulation.

1 F. The party's position on settlement, including present demands and offers and a history
2 of past settlement discussions, offers and demands.

3 **IX. Request for Bifurcation, Appointment of Special Master, or other Techniques to Shorten**
4 **Trial**

5 None at this time.

6 **X. Related Matters Pending**

7 There are no pending related matters.

8 **XI. Compliance with Federal Procedure**

9 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
10 and the Local Rules of the Eastern District of California, and to keep abreast of any amendments
11 thereto. The Court requires compliance with these Rules to efficiently handle its increasing case load.

12 **XII. Effect of this Order**

13 The foregoing order represents the best estimate of the court and counsel as to the agenda most
14 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
15 parties determine at any time that the schedule outlined in this order cannot be met, counsel are
16 ordered to notify the court immediately of that fact so that adjustments may be made, either by
17 stipulation or by subsequent status conference.

18 **The dates set in this Order are considered to be firm and will not be modified absent a**
19 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
20 **extending the deadlines contained herein will not be considered unless they are accompanied by**
21 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
22 **for granting the relief requested.**

23 **Failure to comply with this order may result in the imposition of sanctions.**
24 IT IS SO ORDERED.

25 Dated: May 15, 2024


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27 UNITED STATES MAGISTRATE JUDGE
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